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Constitutional Law

United States Constitution Fourteenth Admenment Sec. 1

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1958

STATE OF FLORIDA, ex rel JIMMIE LEE THOMAS,

Petitioner

vs.

R. O. CULVER,

as Director of the Divisions of Corrections of the State of Florida, and DALE CARSON, Sheriff of Duval County, Florida,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable Chief Justice of the United States and the the Associate Justices of the Supreme Court of the United States:

Petitioner respectfully prays that a writ of certiorari issue to review a decision of he Unied States Circuit Court of Appeals, Fifth Circuit. affirming a judgement of the United States Disrict Court, Southern District of Florida, Jacksonville, Divislon, entered in the above entitled case on April 2, 1958.

CITATIONS TO OPINIONS BELOW

The Opinion of the United States District Court, Southern District of Florida, Jacksonville Division, contained in the record. The opinion of the United States Circuit Court of Appeals, Fifth Circuit, printed in Appendex B hereto. infra, A-B, is not reported.

JURISDICTION

The judgement of the United States Circuit Court of Appeals. Fifth Circuit, was entered on April 2, 1958. The jurisdiction of this Court is sought under Title 28, U.S.C., Section 2101 (c); Title 28 U.S.C., Section 1254 and Section 1257.

QUESTION PRESENTED

Whether the verdict of a State Trial Jury is open to attack on the grounds that said trial jury in rendering its verdict violated the Fourteenth Admendment to the United States Constitution where the trial jury's verdict was rendered pursuant o State Law which grants the trial jury, not only the duty of finding all facts involved inthe case, but also grants to the trial jury the power and authority to determine whether the defendant is to suffer the maximum penalty under the law, to-wit; life, or death by the giving or withholding a recommendation of mercy.

CONSTITUTIONAL LAW INVOLVED

The Constitutional provision involved is United States Constitution, Fourteenth Admendment, Section 1, printed in Appendix A. infra, page 1.

STATUTES INVOLVED

The statutory provisions involved are Florida Statute Section 794.01, RAPE AND FORCIBLE CARNAL KNOWLEGE; penalty, and Florida Staute Section 919.23, RECOMMENDATION TO MERCY, Par. 1; they are printed in Appendix A, infra, pp. 1.

STATEMENT OF CASE

The Petitioner, Jimmie Lee Thomas, colored, was arrested and charged with rape of one Leona Lassiter, a white woman. On May 20, 1955, the Grand Jury returned an indicment charging the defendant with rape. The defendant was arraigned on June 2, 1955 and pled Not Guilty. The defendant wen to trial before the Circuit Court In and For Duval County, Florida before he Honorable Claude Ogilvie. on Monday, July 18, 1955. The jury returned its verdict on July 21, 1955, finding the defendant Guilty as charged in the indictment and did not recommed mercy. The defendant filed his Motion for New Trial on July 25, 1955, raising the question involved herein on September 29, 1955, the Court denied defendant's Motion for a New Trial and on said date the Court adjudged the defendant guilty of rape and sentenced him o die by electrocution as provided by the Statutes of Florida.

The defendant was declared insolvent for purposes of Appeal on September 29, 1955. On December 20, 1955, the

defendant filed his assignment of Errors and Directions to the Clerk raising the quesion involved herein on March 6, 1956. On March 6, 1956 the Supreme Court of Florida granted defendant't Motion for extension of Thirty (30) days in which to file Appellant's Brief. The Opinion of the Supreme Court of Florida, affirming the Judgement and Sentence was rendered on February 6, 1957. A Petition for Re-Hearing was filed on February 21, 1957, the Order denying the Petition for Re-Hearing was issued on March 7, 1957. A Petition for Writ of Certiorari was filed in he Supreme Court of the United States and the same was denied on June 17, 1957.

This Petitioner filed a Petition for a Writ of Habeas Corpus in the United States District Court of the Southern District of Florida on October 4, 1957. This Petitioner was adjudged insolvent and an order to Show Cause was issued by the Court.

On October 17, 1957, pursuant to he Court's order to Show Cause, this Petitioner appeared before before the Honorable Bryan Simpson and presented his evidence and argument along with the State, after which on October 17, 1957 the Honorable Bryan Simpson Judge of he United States District Court of the Southern District of Florida, entered his order denying he Petitioner's Petition for the issuance of a Writ of Habeas Corpus and also refusing to issue a Certificate of Probable Cause, thereby denying this Petitioner the privilege of appealing his case to this Honorable Court. The Petitioner was also adjudged insolvent for the purpose of appeal.

In November, 1957, your Petitioner filed his Application for a Certificate of Probable Cause before the Honorable Warren L. Jones, a judge of the United States Court of Appeals, Fifth Circuit, and on November 15, 1957, an order certifying probable cause was issued by Judge Warren L. Jones

This Petitioner perfected his appeal to the United States Court of Appeals Fifth Circuit, from the order of United States District Court, Southern District of Florida, Jacksonville Division denying this Petitioner's Petition for Writ of Habeas Corpus. This Petition is for a writ to issue to the United States Court of Appeals for the Fifth Circuit to review the judgment and opinion entered by that court on April 2, 1958, affirming the judgment of the U. S. District Court in regards to this matter.

The Court of Appeals rested its opinion upon the theory of the inviolability of the jury room and wide discretion given to the jury in regards to the given or withholding of a recommendation of mercy citing ANDRES v. UNITED STATES OF AMERICA, 333 U.S. 740.

REASON FOR GRANTING THE WRIT

1. The decisions of the Courts below in the instant case and in **ANDRES v. UNITED STATES OF AMERICA**, 333 U.S. 740, upon the authority of which the instant case was decided, did not take into consideration the specific issue raised by the complaint, to-wit; whether a jury may consider the racial identy of an accused in the exercise of its discretion to withhold or grant a recommendation of mercy.

In **ANDRES v. UNITED STATES OF AMERICA**, supra, this Court did not consider the basis upon which a jury may rest that portion of its verdict imposing the degree of punishment the accused is to receive but instead considered the question as to whether a verdict rendered by a jury which involved a determination not only of guilt but also the punishment that is to follow upon the finding of guilt, is to be unanimous without seperating that portion of he verdict finding the accused guilty from that portion pronouncing the degree of punishment.

2, In **WINSTON v. UNITID STATES**, 172 U.S. 303. 312, 313 cited by the Appellate Court below as the authority followed in **ANDRES v. UNITED STATES OF AMERICA**, supra, this Court in illustrating the stadfastness with which the full and free exercise by the jury of powers granted it under these new statutes, granting it the authority to determine the degree of punishment an accused is to receive upon a finding of guilty, enumerated the following factors which the jury may consider; age, sex, ignorance, illness, or intoxication; human passion or weakness, sympathy or clemency, or the irrevocableness of an executed sentence of death, or an apprehension that explanatory facts may exist which have not been brought to light or any other considera tion whatsoever which deciding the question whether the accused should be capitally punished. It is to be noted that this Court did not list race or nationality as one of the factors which the jury may take into consideration in determining whteher or not to exercise its power granting or withholding a recommendation of mercy or otherwise qualifying the degree of punishment an accused is to receive after a verdict of guilty. It is clear that the issue raised by this case has not been decided by this court. Issue raised herein affects statutes passed by at least Forty-four (44) States in the Union, and the Federal Statute providing for jurors to render verdicts qualifying the degree of punishment a defendant is to suffer after a finding of guilt for a capital offense.

3. It is clear tha **WINSTON v. UNITED STATES and ANDRES v. UNITED STATES OF AMERICA**, supra, is no authority governing the issue of race as a factor to be considered by a jury in the exercising of its discretion in qualifying the punishment of an accused under the Florida Statutes involved in this case.

4. The Stae made no attempt to deny the discriminaion alleged by the petitioner. The Appellate Court did not consider he evidence of racial discrimination submitted by the petitioner although the history of trial juries' action extended over the entire period during which the particular statutes have been administered. This action of the Court is directly in conflict with the authority set forth in **YICK WO v. HOPKINS and WO LEE v. HOPKINS**, 118 U.S. 356. This Court speaking in connection with the degree of proof required to show discrimination said:

Page 374:

" . . . . No reason whatever, except the will of the superviscors, is assigned why they should not be permitted to carry on, in the accustomed manner, their harmless and useful ccupation, on which they depend for a livelihood. And while this consen of the supervisors is withheld from them and from two hundred others who have also peitioned, all of whom happen to be Chinese subjects, are permitted to carry on the same business under similiar conditions. The fact of this discrimination is admitted. . . "

Florida Statutes 794.01 and 919.23 provides that upon a guilty verdict of rape the punishment shall be death, unless mercy is recommended by the majority of the jury in which event punishment shall be imprisonment for life or for any term of years within the discretion of the Judge. The statutes grant unfettered authority to impose the death sentence without the consideration of a single factor. The uncontradicted history reveal that more than twenty-five (25) Negroes have been given the death sentence under the statute while no defendant of other racial identies have been executed for rape in Florida. The petitioner is of he opinion that the degree of proff required falls within the authority of **YICK WO v. HOPKINS**, supra.

5. Clearly, the question presented is of importance in the administration of justice especially in Southern Courts where many Negroes are brought to trial. Racial tension prevailing throughout the State of Florida and other Southern States cannot be overlooked and every case involving

white and colored citizens is subject to wide public concern.

The State must be required to give every degree of protection to each defendant regardless of race, color or creed. The question as to what restraints are imposed upon a jury in respecting the Constitutional guarantees of Negroes is of prime importance where Southern Legislatures are inclined to increase he unfettered power of the jury to avoid Constitutional restraints.

6. The decision of the Court below is believed to be erroneous and conflicts with the authority recognized by this Court in **YICK WO v. HOPKINS** and oher recent decisions of this Court in connection with Constitutional Restraints imposed upon States in the preservation of Civil Rights for Negro citizens. It is indeed dangerous to permit the jury to be used as a scapegoat by which States are relieved of their Constitutional Restraints in the protection of individual rights guaranteed by the United States Conostitution.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully Submitted,

Pickford McGriff

Ernest D. Jackson

APPENDIX "A"

(Constitutional Law and Statutory Provisions Cited and Quoted)

CONSTITUTIONAL LAW INVOLVED

U. S. Constitution. Fourteenth (XIV) Admendment, Sec. 1:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; **nor deny to any person within its jurisdiction the equal protection of the laws.**"

STATUTES INVOLVED

Florida Statute Section 794.01, RAPE AND FORCIBLE CARNAL KNOWLEDGE; penalty.

> **"95. (794.01) RAPE AND FORCIBLE CARNAL KNOWLEDGE; PENALTY.—Whoever ravishes and carnally knows a female of the age of ten years or more, by force and against her will, or unlawfully or carnally knows and abuses a female child under the age of ten years, shall be punished by death, unless a majority of the jury in their verdict recommend mercy, in which event punishment shall be by imprisonment in the state prison for life, or for any term of years within the discretion of the judge. It shall not be necessary to prove the actual emission of seed, but the crime shall be deemed complete upon penetration only."**

on 919.23, RECOMMENDATION TO

minal trials, the jury, in addition
uilty of any offense, may recom-
to the mercy of the court or to
y, and such recommendation shall
he verdict except in capital cases.
urt shall award the sentence and
shment or penalty prescribed by

APPENDIX "B"

ES COURT OF APPEALS

The Fifth Circuit

A ex rel JIMMIE LEE THOMAS

Appellant,

versus

ector of the Division of Corrections
orida, and AL. CAHILL, Sheriff of
ida,

Appellees

ited States District Court for the
n District of Florida

April 2, 1958.)

. Chief Judge, and BORAH and
E. Circuit Judges.

s an appeal from the denial by trial
s corpus. Appellant, a Negro, stands
f a white woman, and is sentenced
State of Florida by reason of a ver-
recommendation of mercy.* Appell-
ented his appeal to the State Su-

preme Court and sought certiorari of the United States Supreme Court, which was denied, 35 U.S. 925. In such appeals he urged the constitutional grounds for relief here asserted.

Appellant attacks the actions of the State of Florida which produced his conviction and sentence as being violative of his rights under the Fourteenth Admendment to Constitution of the United States. He specifies that the rape statute gives to the jury the uncontrolled and unfettered power to impose the death sentence on some and not impose it on others found guilty of the same crime; that this power has been used by the juries in Florida to discriminate against Negroes convicted of rape as a class and on account of their race in that they do not in fact condemn Negroes to death for rape but do not treat white persons convicted of the same offense in the same manner. He produces statisics to the effect that during a period of approximately 20 years, 24 Negroes have been executed for rape and no white person have been so executed.

The statute is obviously not unconstitutional on its face. Nearly all the states and the federal government have statutes which authorize jury recommendation or jury fixing of punishment in capital cases. For an extensive discussion of this subject see **Andres v. United States of America,** 333 U.S. 740. In light of the inviolability of the jury room, and in view of the uncontrolled character of the determinations that are confided to the jury,* the trial court could not find that the statute here is unconstitutional in its application either to Negroes generally or to this appellant. Its judgement must therefore be

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*—See Florida Statute Sec. 794.01 cited in Appendix A

**—See Florida Statutes Sec. 919.23, cited in Appendix A.

JUDGEMENT

Extract from the Minutes of April 2, 1958

STATE OF FLORIDA. ex rel JIMMIE LEE THOMAS

No. 17010. **versus**

R. O. CULVER, as Director of the Division of Corrections of the State of Florida, and AL CAHILL. Sheriff of Duval County. Florida.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

On consideration whereof, it is now here ordered and adjudged by this Court that the judgement of the said District Court in this cause be, and the same is hereby, affirmed.